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RETIREMENT OF SIR C. V. KUMARASWAMI SASTRIAR, *Kt.*

The retirement of Sir C. V. Kumaraswami Sastriar from the High Court will leave a void which it will take some time for the bar and the public alike to reconcile themselves to. It has not often been possible for the Indian Judges of our High Courts to hold office very long. But Sir Kumaraswami Sastriar has been more fortunate in this as in many other respects. His length of tenure comes very near to Sir T. Muthuswami Aiyar's, but the similarity between the two learned Judges almost ends here, their respective lives showing more points of contrast than of resemblance.

Nature has, indeed, been very generous to Mr. Sastriar in many ways and not the least of her bounties are an attractive personality and a charming suavity. Born of a family which for at least two generations before, had occupied a prominent position and had been held in high esteem in the City of Madras, Mr. Sastriar had the advantages of circumstances no less than the advantages of nature.

After a brilliant educational career, he joined the bar in 1894 and in about a decade, he attained a leading position on the Original Side even when men like Mr. Eardley Norton were practising here. In spite of such position at the bar, Mr. Sastriar accepted office in 1905 as a puisne Judge of the Madras Court of Small Causes. Some time later, he became Judge of the City Civil Court and between 1912 and 1914 he served as a District Judge in the mofussil and enjoyed a unique popularity there. During the greater part of the time he had been a Judge

of the High Court, he had been sitting on the Original Side and it is generally believed that that kind of work was more to his taste, while it is undoubtedly true that his experience at the bar there and his wide knowledge of business and businessmen in the City served him in very good stead in the trial of original causes. On the Appellate Side, he was particularly welcome as a member of a bench dealing with first appeals, where his experience and knowledge of human nature were of special value and he could easily get at the crux and generally the truth of the case. Technicalities, even when apparently serious, rarely tied his hands when he thought that in the interests of substantial justice they should be brushed aside. He never claimed a passion for law nor exhibited an anxiety like some of his predecessors to make his contribution to the development of law. But his reported judgments suffice to show what he could do in that direction when occasion required. His tendency was distinctly in favour of a liberal and equitable interpretation of the law and its application in such a manner as would advance substantial justice. In co-operation with Sir T. Sadasiva Aiyar and Mr. Justice Seshagiri Aiyar, he tried so to mould the course of decisions under the Hindu Law as to bring it into conformity with modern ideas and circumstances, especially in respect of the rights of women, the status of illegitimate children and the disabilities of joint family status.

It cannot be denied that his part in the Rowlatt Committee caused a set-back in his popularity, but that was soon forgotten and in recent years, the regret was widely shared that the Statute law made it impossible for him to become the Chief Justice. His duties at the bar or on the bench did not monopolise his time and attention. He took a keen interest in literature and perhaps a keener interest in advancing the amenities of social life among Indians, through the Cosmopolitan Club. He imbibed from his grandfather a love of Sanskrit culture and a respectful solicitude for the dying race of pandits. The Bar cannot bid him farewell without a touch of regret and we trust that he may be spared long to enjoy his well-earned rest.

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OUR JUDICIAL SYSTEM.

THE PRESENT POSITION EXAMINED, AND IMPROVEMENTS SUGGESTED.

No one can seriously gainsay that the present judicial system admits of improvement in various directions. Just like other institutions the character of the system has been largely dependent on historical causes. Attempts at a conscious building up of the system have been confined to piecemeal substitution or improvement of a part here and another there. It cannot well have been otherwise having regard to the main traditions of English or British Indian Legislation. To this day the English judicial system maintains vestiges of its origin and each reform has proceeded on lines calculated to keep up a continuity with the old state of things. The British Indian Empire was slowly built up and the old institutions functioning under the Mohamedan administration were continued under the new regime. The substantive law applied and the procedure followed by the early British Indian Courts were similarly indigenous. From that period up to the present, there have been no doubt far-reaching changes in law, procedure and the constitution of Courts; but these have been accomplished by slow stages each of which left the structure then existing substantially intact.

The Nizamut and the Dewanny represented the criminal and civil sides of the Mohamedan judicial administration and the early British Indian Courts continued their nomenclature and the distribution of jurisdiction as among them. The District was evolved as a local entity comparatively early in British

Indian history and has up to now maintained its integrity as the basic unit of executive and judicial administration. The Zilla Judge corresponded to the present District Judge and the judicial authorities subordinate to him fell under the description of Munsif or Sudder Ameen. The latter functionary has led up to and been superseded by the present Subordinate Judge. At the head of the judicial system was the Sudder Dewanny Adawlut, the principal provincial Court of Appeal. *Pari passu* with the provincial system, another founded on English traditions was functioning in the Presidency Towns. The Supreme Court with Judges recruited from England and barristers practising before them was the centre of that system. The High Court superseded the Provincial Dewanny Adawlut and the metropolitan Supreme Court, but the distinction which persists to this day between the Appellate Side and the Original Side is a sharp reminder of prior history. Even the word Vakil is a survival from a bygone age and a link between old times and new, which threatens to be swept away by the operation of the Bar Councils Act, although it may take a decade or more for the class entirely to disappear.

At the outset certain fundamental facts arising out of the character of the country and its people may be set down. The province is the area to be covered by each single judicial system and as there are large variations between province and province each system has to be so devised as to suit the requirements of the particular province for which it is intended. The High Court is and must continue to be the provincial centre of the judicial organisation. It is unnecessary to refer to the controversy about the constitution of a Supreme Court of Appeal. Such a Supreme Court can by the very nature of things only do what the Privy Council is now doing and for purposes of the constitution of the Courts within the province and the distribution of jurisdiction as among them, as well as for purposes of control and administration the High Court should be the source of radiation of all judicial authority. The High Court has to serve an area of many thousands of square miles and several tens of millions of population. The country is for the most part poor and the problem of transport over hundreds of miles is a costly one for the village ryot. Suits of small value make up a dominating percentage of litigation. Owing to the conditions of agriculture and land tenure as well as the operation of the law of inheritance and partition disputes with regard to small bits of land abound. It is true that with the

development of the country, commerce and industry are contributing an increasing share to the work of the Courts; but as yet the proportion of these disputes is inconsiderable. The complexity of the questions raised in suits of small value is in many instances in inverse ratio to the interests involved. Numbers of witnesses are being examined in big and small suits alike and it will take long before parties recognise the utility of agreeing on facts or narrowing down their disagreement to an interpretation or the ascertainment of the effect of documents. These and similar causes render it essential that local areas should function as distinct and separate units for the purpose of judicial business. The district which has been the main local unit up to now has always to be so and it is with reference to the district as a local area that the details of the judicial system have to be devised and carried out.

So far, the main principles regulating the present system would appear to coincide with those of any ideal system and the point of departure should be sought, if at all, within the district. Within the district, however, the systems in vogue in various provinces are widely different and cannot well be otherwise. It will suffice for the limited purposes of this present article to investigate the question with reference to Madras. In that Presidency we have three categories of Courts within the district—the lowest, that of the District Munsif, the next higher, the Court of the Subordinate Judge, and the District Court at the top. The Subordinate Court is not a necessary feature of the system and there are districts in which it is not found. The theory would seem to be that there are two grades of original jurisdiction, the lower limited in point of pecuniary jurisdiction and the higher the District Court which is unlimited in point of jurisdiction. The Subordinate Court would appear to have been originally conceived as a relieving agency to take over the legitimate work of the District Court in areas where the latter cannot bear the burden. The name itself would imply that the Subordinate Court was not meant to have any independent existence and that it was meant only to be an assistant to the superior Court. If this was the theory which underlay the constitution of these Courts, the present times have very far outgrown that conception. By far the vast bulk of the higher grade original suits are heard and determined by the Subordinate Courts and in many places the original jurisdiction of District Courts is no more than a bare name. The history of legislation bearing on the constitution of Courts would show

that the District Judge has alone been held competent to decide matters of original jurisdiction other than suits. Special jurisdictions like these relating to Land Acquisition, Probate and Administration, Guardianship of Minors, Protection of Lunatics and even Succession Certificates have been the province of the District Court. The recent tendency has been for a devolution of some of these matters to Subordinate Courts, *e.g.*, Land Acquisition, Guardianship, Succession Certificates, but the idea that all the residuary original jurisdiction should be deemed to reside in the District Court is still an article of faith. When new statutes are enacted creating new remedies, the tendency is to vest the jurisdiction in the District Court. (*Cf.* The Madras Hindu Religious Endowments Act.)

The District Munsif's Court is the one in which the bulk of the litigants of the country are interested. These Courts are widely spread over the country and bring justice as near the litigants' door as can be reasonably expected. They are bound to be a permanent feature of the system and the distinction between them and the higher Courts in point of pecuniary jurisdiction has to be maintained. It may be a debatable point whether the time has not come for raising the jurisdiction of the District Munsif from Rs. 3,000 to a higher figure, say, Rs. 5,000, but that there should be two grades of Courts cannot be gainsaid. The suits of small values make up the preponderating majority and cannot be embarrassed or held up for the convenience of the big suitor interested in the cause that takes weeks or months for hearing. It is neither necessary nor possible to secure for the determination of small matters the ripe experience essential for a correct determination of heavy and intricate disputes. Thus, save by way of increasing the pecuniary jurisdiction of the District Munsif and thereby affording relief to higher Courts, the nature and quality of his jurisdiction has to be maintained.

But so far as regards the distinction between the District Court and the Subordinate Court as Courts of Original Jurisdiction the time has come to abolish the same. The maintenance of the distinction has neither logic nor practical convenience to recommend it. The quality of the work of Subordinate Judges is abundantly testified to in the pages of recent Privy Council judgments many of which have reversed the High Courts and restored the decisions of the Trial Courts. It cannot surely be contended that there is anything in special jurisdiction like Land Acquisition, Probate, Divorce, Lunacy,

and Guardianship which is more difficult than complicated and intricate suits involving title. In fact, the recent experience has shown that these jurisdictions can safely be conferred on Subordinate Courts. If the policy of devolution of these special powers from the District to the Subordinate Courts be pursued there must surely come a time when two sets of Courts will function with jurisdiction of the same nature, quality and limits —one set being superior and the other subordinate. Can there be anything in the nature of things to recommend this? Obviously not. It is clear we are moving towards a unification of the Sub-Court with the District Court and in so far as their original jurisdiction is concerned sooner or later the ideal must be realised.

So far as appeals are concerned the present position requires drastic readjustment. The question of appellate jurisdiction is intimately bound up with the mode of recruitment and promotion of the judiciary. The present system is to recruit District Munsifs from the bar or from clerical staff and to promote them in due course as Subordinate Judges. The system is sound in principle and has been found to work well in practice and one should think twice before suggesting a change. So far as the District Courts are concerned the cadre is made up of (1) Indian Civil Servants promoted from the ranks of Joint Magistrates, (2) Senior Subordinate Judges promoted to the post, and (3) direct recruits from the Bar. There is some difference of opinion as to the best mode of recruitment to the District Judgeships—but it is not the purpose of this article to attempt a solution for such questions. The facts are referred to merely as leading up to a discussion of the main question as to the constitution of Appellate Courts. That the High Court is the main appellate tribunal for the province is taken for granted. It is equally obvious that the High Court should be guarded from being flooded with trivial matters. It being premised that the district should continue as the local unit of judicial business, a strong appellate authority has to be constituted within the district. So far as the present position is concerned it is exceedingly unsatisfactory. Mr. *A* is a Senior District Munsif and records a judgment on the eve of his promotion as a Sub-Judge. The appeal is filed and after a pendency of 2 or 3 years is heard by Mr. *B* who, though a junior to Mr. *A*, happens to have been just appointed as Sub-Judge. Whether the appeal succeeds or fails, there is no satisfaction to the defeated party and after all it is difficult to say that the Appellate Court is entitled to greater

confidence than the Court of first instance. It is the same thing with probably some additional picquancy when a newly appointed District Judge is asked to reverse the Judgment of a Senior Subordinate Judge. Or take another aspect. In respect of suits of less than Rs. 5,000 in value there is a first appeal to the District Court and a second appeal to the High Court. In respect of suits of over Rs. 10,000 there is a first appeal to the High Court and a second appeal to the Privy Council, but in the intermediate class of suits (the suits between Rs. 5,000 and Rs. 10,000) in value there is only a first appeal allowed to the High Court and no second appeal. Is there any reason to give an exceptional treatment to the last category of suits? The circumstance that the first appeal lies to a Bench of the High Court, whereas in the first set of cases the first appeal lies only to a single Judge in the district is not a sufficient or a satisfying explanation for the differential treatment. The idea about the pecuniary limits of the jurisdiction of Appellate Courts is not uniformly maintained. Take the case of a suit for accounts. It is common to put a notional valuation on such suits and plaintiff's valuation is final for purposes of jurisdiction and Court-fees. If, however, as a result of taking accounts a much larger sum which is well over the limits of the pecuniary jurisdiction of the District Court is found due to either party, the appellate forum does not change for that reason to a superior tribunal. Again under the present system very serious questions come up for consideration in the exercise of Insolvency Jurisdiction. The scheme of the Provincial Insolvency Act is to vest the main appellate jurisdiction in the District Court and to allow second appeals to the High Court only in a few cases. Heavy insolvencies fall to be administered by the moffusil Courts and the Sub-Courts bear the brunt of the burden. In all such cases, whatever be the value of the particular question determined, the appeal has to be preferred only to the District Court. There are cases where the validity of alienations to the tune of lakhs of rupees comes up for determination by the Sub-Court as the Court of first instance and by the District Court as a Court of first and final appeal. Take again matters relating to Succession Certificates as to which the jurisdiction has devolved largely to the Sub-Courts and even to District Munsifs' Courts. Here again the Court of first and final appeal is the District Court which may transfer the appeal to the Sub-Court where the order appealed against was made by a District Munsif. Then with reference to the mode of ascertainment of pecuniary jurisdiction itself the present state of things leaves very much to be desired.

Take the case of suits for possession of land. Where the land happens to be of ryotwari tenure, the rule is to adopt ten times the Government assessment as the value. It is not the purpose of the present article to suggest that there should be any revision of this rule for Court-fees purposes. Already the clientele are groaning under the weight of the heavy rates adopted in 1922 and the prospect of reduction is receding farther and farther away in spite of any amount of discussion in the Legislative Council. But the adoption of the same mode of valuation for purposes of the determination of the forum leads to anomalies. A District Munsif can try a suit for possession of an estate whose annual revenue is Rs. 300, and the market value of the estate may very nearly and modestly be put at Rs. 25,000. Rs. 25,000 is a great fortune to most middle class families. It is hard to understand the rationale of a system under which a Court which can easily make or mar families cannot try a suit on a promissory note for more than Rs. 3,000. The likelihood of an erroneous decision is much greater in the former case than in the latter. The same observations apply with greater force to the state of things which would enable a Subordinate Judge to dispose finally of questions of fact on first appeal in heavy and intricate land disputes decided by a District Munsif, but would prevent a District Judge from hearing an appeal involving a money claim of more than Rs. 5,000. It is true that even in the ideal system of gradation of Courts and delimitation of pecuniary jurisdiction a perfect approximation of all kinds of disputes to the standard value of the jurisdiction cannot be ensured; but to concede that is a very different thing from being satisfied with a state of affairs which admits of this enormous variation between theory and practice.

The High Court Original Side is a survival from ancient history and its existence at the present day takes away the homogeneity of the judicial system as a whole. It cannot be seriously maintained that the Original Side litigation presents any peculiar complexity which cannot be effectively dealt with by the type of the moffusil judiciary. The theory that the Presidency town has a vested right to have the highest tribunal functioning as a Court of first instance had its integrity broken into when the City Civil Court was established. Once the City Civil Courts are a settled fact, it is only a question of drawing the line between the jurisdiction of the City Civil Court and the Original Side of the High Court. The present line of distinction which fixes the limit of the City Civil Court's jurisdiction at

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Rs. 2,500 is certainly arbitrary. The City Civil Judge has the same status as District Judges and that Court can certainly be trusted to decide disputes of a greater value. Indeed there is no good reason to fix any limits to its jurisdiction. At least two Judges of the High Court are constantly sitting on the Original Side and the strength of the City Court can be trebled or quadrupled by the saving effected by the withdrawal of original work from the High Court. Indeed there is absolutely no good reason for any special treatment being meted to the Presidency town. The suggestion that District Munsifs and Subordinate Judges may function in the Presidency Town as well as in the moffusil has really nothing violent about it and need not outrage anybody's susceptibilities. The transition can be effected by a gradual devolution of the High Court's original jurisdiction to the City Civil Court and adding to its strength so as to make it cope with the greater volume of work. On the devolution becoming complete it would be only an alteration of nomenclature to bring the system into accordance with the moffusil. In any event the period of the transition would be a period of trial and would disclose things seriously wrong if there should be any.

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(To be continued.)

SUMMARY OF ENGLISH CASES.

ANZIANI, *In re* HERBERT *v.* CHRISTOPHERSON, (1930) 1 Ch. 407: 99 L.J. Ch. 215.

Conflict of laws—Assignment of movable—Lex situs *or* lex domicilii—*Document partly testamentary and partly not—If can be treated as a conveyance* 'inter vivos'.

A deed executed in Italy, in exercise of the powers of appointment conferred on the executant by marriage settlements executed in England in accordance with English Law, purported to operate both as a conveyance *inter vivos* and as her last will and testament. Such a deed is valid and can take effect as a conveyance *inter vivos* though as a will it does not for some reasons. The document purported to assign a movable situate in England but the assignment was invalid and void in Italian Law but valid according to the English Law.

Acc. No. ... Date ... C. U.

Held, the validity of the assignment must be determined by the law of the country in which it had been executed and in which the assignor was domiciled and not by the law of the country where the chose in action or the movable is situate.

Rule 153 of Dicey's Conflict of Laws is not accurate and Rule 152 would be more accurate if instead of the word 'assignment' the word 'transfer' had been used, as it really refers to the transfer of goods, effected generally by delivery, sometimes in market overt.

Republica de Guatemala v. *Nunez*, (1927) 1 K.B. 669 followed.

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[N.B.: *Rule* 152.—An assignment of a movable which can be touched (goods) giving a good title thereto according to the law of the country where the movable is situate at the time of the assignment (*lex situs*), wherever such assignment is made, is valid.

Rule 153.—An assignment of a movable which cannot be touched, *i.e.*, of a debt, giving a good title thereto according to the *lex situs* of the debt (in so far as by analogy a situs can be attributed to a debt) is valid. Provided that (1) the liabilities of the debtor are to be determined by the law governing the contract between him and the creditor; (2) the right to recover the debt is, as regards all matters of procedure, governed by the *lex fori.*]

In re MILLS: MILLS *v.* LAWRENCE, (1930) 1 Ch. 440.

Will—Power to appoint any qualified member of a class—Trust in favour of donee in default of appointment—Release of power by trustee—Validity of—Law of Property Act, 1925.

By his will, a testator directed the income of his estate to be accumulated in a certain manner for a period of 21 years from his death and declared that the trust fund and accumulations of income be held in trust for the benefit of all or any one or more exclusively of a specified class of persons who in the opinion of his brother evidenced an ability to maintain the family fortune, as the testator's brother should by any deed appoint, and in default of appointment to the brother absolutely. By a deed of appointment of 1928 the brother settled in favour of some children, but by a later deed revoked the appointment and released the trust fund from the power to the intent that the power should be absolutely extinguished.

Held, that it is a power coupled with a duty. It was clear that the testator intended or contemplated that the power should be retained and be exercisable at least down to the expiry of the primary trust for accumulation. The brother is not, therefore, free to divest himself of the power or to do anything which will preclude him from exercising it.

Weller v. *Ker,* (1866) L.R. 1 H.L. Sc. 11 and *In re Eyre,* (1883) 49 L.T. 259 followed.

BOOSEY & CO. *v.* GOODSON GRAMOPHONE RECORD CO., (1930) 1 Ch. 448.

Copyright—Gramophone records—Adhesive labels purchased from the owner of the copyright—Labels incapable of adhering to the records—Maker intimating the same to the owner and selling to purchasers without them—If infringes copyright—Copyright Act, 1911 *and Copyright Royalty System (Mechanical Musical Instruments) Regulations,* 1912, *Reg.* 4.

The defendants made some gramophone records in celluloid and asked the plaintiffs, owners of the copyright, to supply them with adhesive labels to be affixed to the records. The royalties due to the owner were made payable under the Act by means of adhesive labels purchased from the owner, the cost of the labels being the cost of the copyright. The makers could not under the Act sell the records without the adhesive labels unless the labels are not available or the owner refuses or neglects to supply them within three days after demand duly made. As the labels supplied would not fix, the makers demanded labels as would adhere to the celluloid and as the owners did not supply them, they proceeded to sell records without it.

Held, by *Eve, J.,* that the Regulation contemplates that the owner should supply the adhesive labels and if the maker has paid in the prescribed manner in respect of the records sold by him, it cannot be that the copyright owner can withhold from him the means of evidencing those payments as prescribed by the Act. The Court of Appeal, reversing Eve, J., held:—That the maker of a record can do so upon certain conditions (*i*) that he has to give a notice of his intention to make a contrivance, and (*ii*) that he has to pay in the prescribed manner the requisite royalties. "Adhesive labels" in the Regulation means what is known ordinarily as 'adhesive labels'. It could not have been the intention of the Legislature that an owner of copyright

should be bound to supply paper labels guaranteed to adhere to the surface of any kind of material of which a manufacturer might choose to make his records. The duty is on the manufacturer to devise some means by which an ordinary adhesive label can be affixed.

In re WALKER: WALKER *v.* WALKER, (1930) 1 Ch. 469.

Will—Construction—'Shall die in my lifetime'—If takes in persons dead before the date of the will.

By his will, dated 27th September, 1920, a testator directed that the residue after paying out certain legacies, etc., should be invested and the income therefrom paid to his wife during her life and after her to be held in trust for all his children in equal shares "provided nevertheless in case any child of mine *shall die* in my lifetime leaving issue living at my death such issue shall stand in place of such deceased child . . . ." One of his sons had died on the 5th September, 1920, leaving a child and the question was if that child can take under the will in place of the father.

Held, that in the absence of anything in the context to suggest that 'shall' in the proviso included children who 'shall or shall have already' died, the primary meaning of 'shall' indicating futurity must be given and the defendant, a child by a predeceased son cannot take.

BARNES *v.* CADOGAN DEVELOPMENTS, LIMITED, (1930) 1 Ch. 479.

Vendor and purchaser—Purchaser of property—Particulars of sale describing property—Innocent but immaterial misrepresentation—If contract can be repudiated by purchaser—Vendor's claim for specific performance.

At an auction sale in 1929 the purchaser bought a property described as having four frontages. Condition 4 to the particulars of sale provided that "Each lot is believed and shall be taken as correctly described and any incorrect statement, error or omission found in the particulars, sale plan or these conditions shall not annul the sale or entitle any purchaser to be discharged from his purchase, nor shall the vendors or any purchaser claim or be allowed any compensation in respect thereof." It was found that by a closing order of 1906 obtained

by the Borough Council, one of the streets was ordered to be closed, but in reality that was not closed. The purchaser claimed damages as for breach of the contract inasmuch as the vendors cannot convey a property with frontage in four streets as agreed. The vendor counter-claimed for specific performance.

Held, that the position was that the property agreed to be sold is sold, only it has not got some of the attributes and advantages described and that will not entitle the purchaser to repudiate the contract and claim damages for breach. The purchaser's remedies then are: (1) to ask the Court to refuse specific performance if the misrepresentation is innocent. He cannot then recover damages; (2) to avoid the contract and claim damages if the representation is fraudulent. Specific performance also decreed as the description was held to be correct in spite of the closing order. 'Street' does not necessarily mean 'a public highway'.

PRICE *v.* HILDITCH, (1930) 1 Ch. 500.

Easement—Right to light—Building erected—Construction not rushed through—Mandatory injunction, if can be granted—Right to light if limited by purposes for which the room is used.

Plaintiff, the owner of a freehold house built in 1907, had enjoyed adequate light to the windows of his house on the northern side. The defendant was the neighbour to the north and the two premises were separated by a wall 3 feet 9 inches high standing on the defendant's property. When the plaintiff was away, the defendant raised up the wall to 23 feet height and thereby caused diminution of light to the plaintiff's house. The work was not rushed through but was done gradually, though the plaintiff was not apprised of it.

Held, that the mandatory injunction could not be granted as the result of granting it would be to impose a large amount of trouble and expense on the defendant, whereas the damage that the plaintiff has suffered can be pecuniarily compensated by a small payment. But injunction would not have been refused if the Court felt that the defendant had rushed up the building in order to evade the interlocutory injunction of the Court. The room was long used as the scullery and it was in evidence that there was sufficient light for such use even now.

Yet held that the plaintiff's right cannot be limited by the use to which the room has been put in the past. What has to be considered is not so much the quantum of light taken away as the quantum of light left. The measure of the light is "what is required for the ordinary purposes of inhabitancy or business of the tenement according to the ordinary notions of mankind, and that the question for what purpose he has thought fit to use that light, or the mode in which he finds it convenient to arrange the internal structure of his tenement, does not affect the question."

Colls v. *Home and Colonial Stores, Ltd.*, (1904) A.C. 179 followed.

COTTON *v.* HEYL, (1930) 1 Ch. 510.

Contempt of Court—Debt—Undertaking by debtor to pay a sum out of the first moneys received on sale of particular things—Failure to fix any time within which the payment is to be made—The first moneys misappropriated to his own use—Debtor if can be committed for contempt—Proper relief.

By an undertaking to the Court, the defendant undertook to pay 1,000*l.* at once and 4,000*l.* out of the first moneys he should receive in a particular event, namely, of sale by him of the foreign rights in a patent. The patents were sold and about 10,000*l.* realised, but the debtor did not pay the 4,000*l.* as agreed but retained it with him in breach of the undertaking.

Held, a bare undertaking to pay money cannot be enforced by committal or issue of attachment, but the case fell under Exception 3 to section 4 of the Debtors Act, 1869, and, therefore, can be so enforced. The undertaking being one to pay a specified sum out of the moneys to be received in respect of a future sale, it constituted an equitable assignment of that sum and binding in equity on the defendant and any dealing in disregard of that assignment would be a breach of his fiduciary duty to the plaintiff. But as the undertaking to pay is indefinite as to time, there can be no default until a definite time for payment is fixed. The Court ordered that the defendant should pay the sum of 4,000*l.* within four days after service upon him of the order.

In re ROADLEY: IVESON *v.* WAKEFIELD, (1930) 1 Ch. 524.

Will—Bequest for maintenance of patients in one or both of two hospitals—If charitable.

By his will, a testator bequeathed a sum of 3,000*l.* to invest the same and apply the income thereof for the benefit and maintenance of patients at one or both of two named hospitals. The hospitals as their rules showed were intended for the maintenance of poor patients. The trust being a trust of income in perpetuity, the question arose if it was a charitable bequest.

Held, that it is a good bequest as it is a trust for the relief of the impotent, aged and poor people within the meaning of the preamble to the Statute of Elizabeth (43 Eliz., c. 4.)

ANKIN *v.* LONDON AND NORTH EASTERN RAILWAY CO., (1930) 1 K.B. 527.

Practice—Production and discovery of documents—Statutory reports made to Minister of Transport—Minister stating that the disclosure will be against public interest—Communications at the request of solicitor—If privileged.

In an action for damages for personal injuries sustained by the alleged negligence of the defendants, the plaintiff obtained an order for discovery of certain documents. The defendants objected to the production of some on the ground that they were "confidential communications at the instance and request and for the use of the defendants' solicitor between the officials of the defendant company and between those officials and third parties after this action was threatened or anticipated for the . . . use of the said solicitor to enable him to defend the action and to advise the defendants." Of some on the ground that they were copies of a statutory report made to the Minister of Transport in compliance with the Regulation of Railways Act, 1871. The defendant wrote to the Minister who also replied stating that in the public interest, he would decline to permit inspection of those reports. The plaintiffs filed a reply affidavit contradicting the defendants' statement that they were all communications with the solicitor and for his use.

Held, by the Court of Appeal, that it is the practice of the English Courts to accept the statement of one of His Majesty's Ministers that production of a particular document would be against the public interest, even though the Court may doubt whether any harm would be done by producing it and if it is

contrary to the public interest to produce an original document, it must be equally contrary to public interest to produce a copy of the same. The Minister is not bound to give any reasons for his conclusion.

Woolley v. *North London Railway Co.,* (1869) L.R. 4 C.P. 602 distinguished.

It is irregular that a deponent stating grounds on which he claims privilege is to be met by an opposing affidavit either contradicting him or cross-examining him with a view of showing that what he has stated is untrue. The documents having been prepared to be laid before the Company's solicitor for the purpose of obtaining his advice and at his request were also privileged.

REX *v.* GENERAL MEDICAL COUNCIL, (1930) 1 K.B. 562.

Medical Practitioner—Registered—Application to remove name from register by practitioner—Complaint subsequently by a third person accusing him of infamous conduct—Council if can enquire into it and erase his name penally.

A medical practitioner registered under the Medical Act, 1858, applied to the Registrar to remove his name from the register. By a Standing Order of the Council, voluntary applications for removal must be accompanied by a statutory declaration by the applicant-practitioner to the effect that he was not aware of any proceedings which might result in establishing cause for the erasure of his name without his consent. After his application but before the Council decided to remove his name, a third party preferred two charges against him and the Council found him guilty of those charges and removed his name penally. The practitioner moved for a writ of mandamus directing the Council to delete from the register of the said Council all records of the said practitioner having been removed penally, the main contention being that once his application for removal was received, he ceased to be a medical practitioner and the Council had no jurisdiction over him.

Held, there is no right at Common Law apart from the Act and until the regulations have been complied with, there is no provision in the Act, entitling a registered medical practitioner to have his name removed from the register. It does not follow that because a practitioner has a right to have his name on the register, therefore he has a right to take it off in

all events. The Council was, therefore, well within its powers in declining to act on his voluntary application and removing him as for infamous conduct. "Infamous" there only means serious misconduct judged according to the rules governing the profession.

BROUGHTON *v.* THE LONDON AND NORTH EASTERN RAILWAY Co., (1930) 1 K.B. 578.

Workmen's Compensation Act, 1925—*Partial incapacity—Employer offering employment otherwise suitable—Workman refusing it as unsuitable to his family—If employment unsuitable.*

A workman employed by the Railway Company as a foreman ganger met with an accident in the course of the employment as a result of which he lost his left eye. He was before that earning £3-1-11. The employers offered him a job as goods porter or as a weighbridge man at Bradford and on his rejecting them, they offered him a job as hoist attendant at Sheffield on a salary of £2-7-10. The workman refused both the offers on the ground that it would be difficult for him to get accommodation there, and further that the place would not suit his wife's health. The employment was otherwise suitable. The Company offered him half the difference between his earnings before the accident and the amount offered by them after the accident as per S. 9, Sub-S. (3) of the Act, but the workman contended that the employment was not 'suitable' within the meaning of that section.

Held, that in considering what is 'suitable employment', the Act excludes the consideration of the state of the workman's family and the lack of accommodation for his family. That does not affect the man's capacity to work. 'Suitable' only means suitable to the workman as such and has no reference to other persons.

GALE *v.* DENMAN PICTURE HOUSES, LIMITED, (1930) 1 K.B. 588.

Discovery—If defendant can be ordered to disclose before delivery of the statement of claim.

In view of a reorganisation of the Board of Directors of a Picture Corporation and its subsidiary and allied companies, of

which the defendant Company was one, some of the shares of the plaintiff in the defendant company were exchanged with the result that the plaintiff ceased to have the requisite qualifying shares for the directorship in the defendant Company and was, therefore, asked to tender his resignation of the directorship. In an action for wrongful dismissal, the plaintiff after issuing his writ, but before he delivered his statement of claim, applied on the summons for discovery of the minutes relating to the exchange of shares.

Held, that there is jurisdiction in the Court to order discovery at any stage of an action, but the Court will not order it before the delivery of the statement of claim, save under the most exceptional circumstances. The plaintiff issuing a writ must be taken to know what his case is and he cannot be allowed to issue a 'fishing bill', to find out whether he has a case or not.

NACHIMSON *v.* NACHIMSON, (1930) 1 P. 85.

Marriage—Law governing marriage contracted in a foreign country—Dissolution of contract by mutual consent or at the will of one party—Suit for judicial separation—If English Courts can recognise the marriage.

The petitioner and the respondent, both domiciled Russians at the time, entered into the Union relied on as marriage in the proceedings. The Union was registered in the register of civil marriages at Russia and a record of it was also produced. According to that law, the registration is conclusive evidence of marriage. Marriage under the Russian law may be terminated by the death of one of the spouses and during their lifetime by their mutual consent or by the unilateral desire of either of them. Only in that case registration of the dissolution or a decree of Court was necessary, the Registrar or the Court having no option, but to record it accordingly.

Held, the nature of the union has to be ascertained by reference to the law under which it is formed, and not by the intention of the parties. Courts of the country where the question arises resort to the law of the country where the contract was made, not *ex comitate*, but *ex debito justitiae*. But the rule extends no further then to the ascertainment of the validity of the contract and unless it is a "marriage" within the definition of that word in English law, the English Court will not recognise it. Marriage in English Law means a voluntary union of one man and one woman to the exclusion of all others,

which is by them indissoluble except by death and any union, which permits dissolution at will of the parties though recognised as marriage in the country where it is contracted, will not be recognised by the English Courts.

Lord Penzance's definition in *Hyde* v. *Hyde*, (1866) L.R. 1 P. & M. 130 applied.

JOTTINGS AND CUTTINGS.

On the 18th July at 4-15 P.M., all the thirteen Judges and a large number of practitioners assembled in the 2nd Court where references were made to the retirement of Sir C. V. Kumaraswami Sastriar.

The Advocate-General on behalf of the Bar said:—

May it please your Lordship, Mr. Justice Kumaraswami Sastri,—

To part with one whom you love and respect, one with whom you have been thrown together for a long time in your daily work, is not an easy task and it is not every one that can command the strength and eloquence to give adequate expression to one's feelings of affection and regard at a farewell function; and I for one feel that I am not quite equal to the task. But the bar rightly feel that they would be failing in their duty if they did not bid you farewell in an appropriate manner and I as their spokesman and accredited representative would therefore crave your indulgence and leave to say a few words.

After a brilliant and distinguished University career with an innate liking for the profession of law as one belonging to a reputed family of lawyers who have rendered signal services to British-Indian judicial administration, you joined the bar in this High Court. With your great talents and industry, your power of lucid exposition and persuasive eloquence, your skill in cross-examination, your sweet and winning manners, you soon made a mark in the profession and became the acknowledged leader on the Original Side of this High Court. In April 1905 at a considerable pecuniary sacrifice, with a genuine love for judicial work you accepted the post of Judge of the Court of Small Causes. It is unnecessary for me to recount the history of your service in the provincial and the city judicial spheres, suffice it to say that it was one of almost unrivalled excellence and great distinction. It is a source of pride and great gratification to me that I had the pleasure and privilege of appearing before you both as a City Civil Judge and District and Sessions Judge and I well remember

the kindliness and encouragement which you extended to me as to other younger members of the profession. In the districts in which you served as District and Sessions Judge, your unfailing courtesy and kindliness to the Bar, your deep learning, your instinctive desire to do justice and your sound judgment of men and things are still nourished as a tradition and you are rightly held up as a model for your successors to emulate and follow your example.

In the year 1914, your appointment as a Judge of this High Court was hailed with joy by the profession and great expectations were naturally entertained of your career on the Bench of this Court when you were called to that high office which to the delight of all have been more than amply fulfilled. As a Judge you were equally at home in every side of the varied work of this Court, whether on the Original Side, in the Civil Appellate Court, in the Criminal Sessions, in Criminal Appeals or in Full Bench References and in the administration of every department of law, in a Hindu Law case or in a commercial cause; and you exhibited the same perspicacity in dealing with a case involving an abstract or abstruse point of law as in a case involving a complicated question of fact. By your keen knowledge of human nature as a result of your long judicial experience, your sterling common sense and your broad outlook which was not contaminated or disturbed by technicalities you were able to get through a bewildering maze of details and seize upon the central and vital points of a case. A counsel arguing a case before you, when he was pressed by some questions from the Bench sometimes felt as if you were present or taken into confidence at some of the important incidents on the unravelling of which depended the decision in the particular case. These qualities were brought out in the boldest relief in the Tanjore Palace Appeals, the hearing of which is still fresh in my mind. An experienced advocate always found that there were no surprises in your Court.

Your judgments were characterised by an intensely human note which made people realise that law is not so inelastic as it is depicted to be, that there is still room for the application of equitable principles and that justice tempered by mercy is a wholesome ideal even in an age ridden by precedents, rigid forms of procedure and statute law. In your long career on the Bench you have illustrated that it is possible to combine in oneself the supreme and pre-eminent quality of judicial patience which makes every litigant feel that his case has been fairly tried and the advocate that he has been accorded a full hearing with a quickness of apprehension and speedy despatch of judicial business. While indecision in coming to conclusions or in appreciating arguments was never a failing or weakness of yours, you were gifted with that quality characteristic of all great Judges of being open to conviction until the last moment. You might at

the opening of a case be tempted to start with a satirical remark or a superficial cynicism but an advocate might be quite sure of convincing you if his case was right and his cause was just. You have exemplified that serenity of temper and dignity are not incompatible with gentle and good humour in a Judge.

While one may be pardoned for saying that you showed a distrust of black-letter learning, the pages of the law reports bear eloquent testimony to your thorough mastery of legal principles, your deep erudition and your profound knowledge of case-law, though you never cared to display more learning than was necessary for the disposal of cases tried by you. In your modesty, both in private conversation and in public, you were accustomed to say that you did not propose to leave imperishable monuments for the benefit of posterity and that you were only concerned with the workaday business as a Judge; but I may assure you that you were greatly mistaken in your estimate of yourself and whether consciously or unconsciously you have left behind you a work which is sure to be appreciated by successive generations of judges and lawyers. Very seldom has a contribution ever been made to posterity by one who consciously aimed at it.

In the field of Hindu Law, while you naturally and if I may say so rightly felt that a Judge ought not to take upon himself the function of a legislator and while your moorings were conservative you were not unalive to the changing currents of social thought and outlook in the Hindu community. In the language of Sir Frederick Pollock there was a harmonious blending of judicial valour and judicial caution in your composition as a Judge.

We at the Bar can realise what a trying thing it is for one to occupy judicial office for a long number of years and to maintain an uniformly good temper and kindliness. But to your credit it has to be said that down to the last day you have maintained a wonderful equanimity and sweet temper. The junior as well as the senior members of the Bar throughout felt that here was a kindly and sweet-tempered Judge before whom he could put his case with a sense of freedom and without undue restraint. To the Bar you were particularly accommodating and you appreciated their difficulties with a sympathetic imagination without in any way impairing or affecting the high quality and measure of judicial work or the interests of public justice. You seldom distrusted a statement at the Bar unless there were definite materials to show that the practitioner was unfair to the Court and abused the trust reposed in him. I do not on this occasion propose to refer to those qualities of head and heart which outside Court have endeared you to all those who came in contact with you and which made people care for you and rally to you as a personality. In the long and distinguished roll of Judges that adorned this

Court, you will always occupy an honourable and prominent place and if I may apply the test suggested by our learned Chief Justice on the occasion of our welcome to him the verdict of the Bar on the eve of your retirement is that you have been a great, good and successful Judge. I can assure you that you are carrying away with you the good feelings and the affectionate regards of the entire bar.

We would miss you very much within these walls and we very much wish that you could stay on with us for some time longer. But we do not grudge you the well-deserved rest after strenuous and arduous public service of 25 years. On behalf of the Bar I wish you farewell and in the fervent hope and prayer that you may be spared for many a long year to come to give the benefit of your sage counsel and advice to the younger generation of judges and lawyers. Is it too much for me to hope that in the India that is to be when we are all aspiring that she will become an equal partner in the Commonwealth of Nations called the British Empire, your services will be utilised in the councils and in the higher judicial tribunals of India and of the Empire? (Applause.) Once more, My Lord, Good-bye.

The Chief Justice, associating himself with the sentiments expressed by Mr. Alladi Krishnaswami Aiyar, said:—Mr. Advocate-General and gentlemen, On behalf of myself and my colleagues on the Bench, I desire to associate myself most sincerely with all that you have said in the course of your reference to the retirement of our learned brother. In the expressions of deep regret we are all here united at his retirement. Speaking for myself, I may say that it has been my privilege—and I count it indeed a privilege—to have been associated with our learned brother for five years as a puisne judge. Then and indeed for many years before, he was a tower of strength to us and as a Judge he was one who always showed towards his brother judges a never failing courteous. During the short time that I have been Chief Justice I have had at my disposal, and had availed myself of it very frequently, the very sound advice that he has given me based upon his own very ripe experience. He has always given me the very greatest assistance in the very many matters on administrative detail with which Judges of this High Court have to deal. I venture to say that he can with justice look back upon his long judicial career with every feeling of pride and satisfaction.

When a newly appointed Judge takes his seat on the Bench, one would, I think, be indeed a very rash person who would venture to say with any certainty that his career is bound to be successful. Possibly there is only one prediction which can with any certainty be made about a Judge when he first starts his career as Judge; and that is that litigants measuring his ability by their

success or want of it before him, when they are successful will hold the opinion that he has at least justified his appointment. As I have said once before—and I was quoted by you, Mr. Advocate-General—on taking my seat as Chief Justice, it is far safer to wait until a Judge comes to the end of his career and then take the verdict of the Bench and the Bar. That verdict is, I know, that our learned brother has been one of the most distinguished Judges whom we had ever to work with on the Bench. I should like to add to that a rider and it is this: that he has earned the very great esteem of his brother Judges. We join with you, Mr. Advocate-General, in bidding farewell to our learned brother.

His Lordship Sir C. V. Kumaraswami Sastriar then made his reply. He said:

"I thank you most sincerely for the honour you have done me by meeting here to bid me farewell and for the very kind and generous terms in which you have expressed your appreciation of my work in the High Court. It is always a hard thing to bid farewell to one's life's work, to colleagues from whom one has received nothing but kindness, and to the members of the Bar whose able and willing help has rendered work in Court not only easy, but pleasant. The emotion at parting renders it difficult for me to find words to express adequately my thanks.

It is a little over 36 years ago (to be precise it was on 1st April, 1894) that I was enrolled as Vakil of the High Court, a young man flushed with the self-esteem that usually follows a successful university career and full of confidence and hope. My enrolment was moved by Sir Subramnia Aiyar, then at the height of his unrivalled powers as an advocate and soon to be elevated to the bench on which he shed so much lustre. I can never forget the very kind words with which Sir Arthur Collins, the Chief Justice, welcomed me to the bar. A similar kindness was extended to my son, by My Lord, the Chief Justice, when he was recently enrolled for which I am deeply grateful.

I have not forgotten that I owe a large part of my success in life to the favourable conditions under which I entered life. My grandfather was the Chief Interpreter in the Supreme Court and was the first Indian Judge of the Small Cause Court, at a time when it was the highest judicial office open to an Indian. He was well known and his impending retirement under the age rules prevented his being appointed as the first Indian Judge of the High Court and Sir T. Muthuswami Aiyar, who was then his junior, was appointed. My father was a leading vakil on the Original Side and I had the advantage of a thorough training under him. When I entered the bar, I joined him and found a well estabilshed office and standing clients. Financially I was

well off and had not the weary years of waiting. I am sure that if many of the juniors had my advantages they would have been equally successful. This has kept me from either vanity or arrogance. It has been my good fortune to have received nothing but kindness and consideration from everybody throughout my career. It is a source of satisfaction to me that I have made many friends and few enemies and in laying down office I have no harshness to regret, and no hasty words which I would gladly recall. I have always tried to do my duty without causing any unnecessary pain or hardship. My efforts have been repaid beyond all measure by everybody.

It has been my lot to have seen considerable changes. None of the Judges who were on the Bench when I was enrolled are now alive and none of those who were my colleagues when I joined the Bench are now my colleagues. Not only has there been a change in the personnel but also in the conduct of work. When I joined the Bar, Judges were more summary. A Judge cannot in these days without getting a paragraph of himself in the newspapers headed 'a breeze in court' avail himself of several of the ways by which the former generation of Judges put an end to arguments which were either untenable or prolix. I remember how cutting were the remarks of Sir T. Muthuswami Aiyar when untenable arguments were advanced or cases not in point cited, how Mr. Bhashyam Aiyangar's long-drawn 'Yes, Yes' put an end to much legal eloquence or how Dr. Subramania Aiyar's flourish of his long quill pen and the obvious look of pain on his face cut short arguments and how a mere look from Mr. Davis was sufficient to induce legal silence. Adjournments were rarely asked for on the ground that a practitioner was away from Madras or that a client had not chosen to reply to a communication to remit moneys. A practitioner generally waited in court when there was a chance of his case being taken up or at least left a clerk to hurry him up if a case was nearing its end. Judges had not to send for practitioners and wait. A string of cases were not quoted on the slightest provocation in the admission courts. A second appeal had no chance of success, unless the Vakil opened by stating concisely the facts found and the law applicable to those facts. We had only about twenty volumes of the Law Reports. The M.L.J. was in its infancy and was creating a mild sensation by criticising judgments. There were only four High Courts and reports of Chief Courts were not quoted.

In one thing I have found little or no change, in the earnest endeavour of the Judges to do their duty in fear of God, and without fear of man, in the friendly relations that subsisted between the Judges and in the earnest endeavours of the members of the Bar to advocate their clients' cause without fear and to render all help in their power to the Judges in arriving at a correct decision. I am sure that as year go by this high standard

will be maintained and that the High Court will for ever be the temple of justice and the best guardian of the rights and liberties of the people of this Presidency.

Gentlemen, as I told you, it is always difficult to wish you all good-bye. The period when we have to part is inevitable. The very inevitability of it prevents us from realising its effect until it actually takes place. I have always looked upon my life as one which is singularly even in its tenor and singularly unruffled. Probably, I have been spoilt by the kindness which I have received. But I retire with the satisfaction that I have always tried to do my duty and in doing so I have always had more than ample reward in the good opinion I had from the Chief Justice and my colleagues and the members of the Bar.

The future is in the lap of the Gods. You wish me a happy and peaceful retirement. I myself feel that the time has come when strenuous work can be put by and when I can devote my attention more to those pursuits and studies which since my school days had a fascination for me. In Sanskrit literature, both as regards art and religion, there is always a field which I can fall back upon and where I can find peace and consolation. In the society of my friends in hearing of the success of several juniors, whose careers are just begun, and who, I am sure, will make their mark in the heaping of honours upon the seniors now before me and in the pleasure of their company outside the Court. I hope to spend the few remaining years peacefully and in joy. The future is in the lap of the Gods and I hope I shall have peace until it should please Almighty God to call me to his lotus feet."

The gathering then dispersed and Sir C. V. Kumaraswami Sastriar was loudly cheered when he left the Court premises.

Lord Hewart's National Lecture.—There will, we imagine, be few who will not agree that the Fifth National Lecture, broadcast on Monday evening by the Lord Chief Justice, with the title *Law, Ethics and Legislation,* was of much wider appeal than any of the four lectures which have preceded it, valuable and interesting as these have been. In the course of rather less than an hour, the layman was told clearly and succinctly the meaning of law, the difference between written and unwritten law, the function of the Judiciary with regard to each, and its relation to Parliament. The necessity for, and the effect of, subordinate legislation, was touched upon, and the difference between public and Private International Law briefly explained. The importance of a realisation by every citizen of the real nature of law was admirably put—

Nothing could be more misleading than to assume, as some persons appear to assume, that law is the same thing as litigation. The body of rules and principles which constitute the law, whether civil or criminal, is not habitually violated by the citizens of a civilised State. On the contrary, it is habitually observed. The civil action or the criminal prosecution is not the rule but the exception.................The knowledge that there is a right of recourse to a Court of Law tends in practice to help people to act in such a way that recourse to a Court of Law is in fact comparatively rare.

And, turning to the ethical side of his subject, Lord Hewart pointed out that there was a vast area of moral duty to which law had nothing to say, whilst a good deal of law had its root in considerations not of morality, but of mere convenience; and it followed that as, for its successful working, law must be supported by the moral sense of the great majority, it must not be in advance of the moral standard of the community. The lecture appears in full in the current issue of *The Listener,* and we hope it will be widely studied.—*L.J.*, 1930, p. 209.

Solicitors and Privilege.—The decision of the House of Lords in *Minter* v. *Priest* (*Times*, March 21) ends a hard-fought and closely-argued lawsuit. Two persons, Mr. Taylor and Mr. Simpson, went to a solicitor, Mr. Priest, to discuss whether he would advance a sum of money for the purchase of property from another person (the plaintiff). The idea was in their minds that, if he would do so, he should act as solicitor for them, or one of them, in and about the purchase. In the course of the interview which followed, the solicitor made observations which were defamatory about the vendor, and which formed the subject of the action. These observations were repeated to the plaintiff, who sued the solicitor for slander. The defendant pleaded privilege for the whole interview, but the jury, on questions left to them by Mr. Justice Horridge, found that at the time when the words complained of were uttered, the relation of solicitor did not exist between the defendant and his visitors, and that the defendant did not reasonably believe that either of the clients wished to retain him. Accordingly, the Judge did not tell the jury that they should exclude from their minds the evidence given by Mr. Taylor, which he tendered upon *subpoena,* with reluctance, and upon leave given to treat him as a hostile witness. The plaintiff recovered a substantial sum in damages; but upon appeal, the Court of Appeal (1929, 1 K.B. 655; 98 L.J.K.B. 661) set

aside the judgment in his favour. That Court was moved chiefly by two old cases which had not been mentioned to the Judge below. *Jones* v. *Pugh* (1 Phillips 96), and *Carpmael* v. *Powis* (*ib.* 687) decided that it is an ordinary part of a solicitor's duty to lay out money for his clients and treat for sale or purchase of estates for them; and that conversations had in the discharge of such duty are privileged. Taking the view that Taylor and Simpson had gone to the defendant in his professional capacity and for business within a solicitor's proper sphere, they held the claim of privilege good.—*L.J.*, 1930, p. 210.

Dissecting an Interview.—The House of Lords took a different view. "The relation of solicitor and client being once established," said Lord Buckmaster, "it is not a necessary conclusion that whatever conversation ensued was protected from disclosure." To secure that privilege, the conversation must be such as within a wide and generous ambit of interpretation is fairly referable to the relation." Once a solicitor says something which is outside that ambit, the fact he is a solicitor, and is speaking to a client, gives him no protection. It does not, we think, follow from this, though it appears so at first sight, that you may or must "dissect an interview" into two parts. The jury took the view that whether the defendant was a solicitor or not, yet at the time the words were uttered he was not speaking as a solicitor to his visitors as clients; and they could regard those words as forming an entire conversation. Upon this finding—to use Lord Buckmaster's graphic phrase—"the cloak of privilege was stripped off the entire conversation," and the solicitor was liable just as he would have been if the words had been spoken on any other occasion. The result is that even if clients go to a solicitor on business which it is admittedly proper for him to pursue, privilege will not attach to anything and everything which he may say in the course of the interview. It is clearly in the public interest that professional privilege should be respected; indeed, the rules of privilege are founded upon strong considerations of that kind. But this privilege, though it must be extended with a generous hand, does not protect against defamatory utterances which are, as the jury found, spoken when the relation of client and solicitor does not exist at all.—*L.J.*, 1930, p. 210.

Copyright in Melodies.—An interesting point on the law of copyright came before Mr. Justice Clauson in *Metzler & Co.* (1920) *Ltd.* v. *J. Curwen & Sons, Ltd.* (*Times*, March 28). The late Mr. S. Coleridge-Taylor composed the music for a song, the words of which were Herrick's "Fall on me like a Silent Dew." This song formed part, a little later, of the incidental music to Sir Herbert Tree's production of *Othello* in April, 1912. The more important parts of this incidental music were made by the composer into a suite called the "Othello Suite" and the melody of "Fall on me like a Silent Dew" formed part of this suite. In August, 1912, Mr. Coleridge-Taylor assigned to the plaintiffs' predecessors-in-title the copyright "of and in the following work of which I am the composer: 'Othello Suite' for piano forte solo and full orchestra." A month later Mr. Coleridge-Taylor died, and in November, 1912, his executrix assigned to the defendants the copyright in the song, under the *bona fide* impression, as was freely admitted, that she was entitled so to do. The plaintiffs alleged that the copyright in the music of the song had passed to them by the assignment of the "Othello Suite" and claimed an injunction and consequent relief. The defence was that the melody of the song was the composer's "raw material," and that, although the plaintiffs had the copyright in one arrangement of it, that did not prevent the composer from treating it in a different way and dealing with it separately. This contention was rejected by the learned Judge who held, as seems to be plainly right, that, the melodies of the Suite and of the song being for all practical purposes identical, and the harmonies varying only so far as would be expected between a piano forte piece, an orchestral piece, and a song with piano forte accompaniment, the composer's whole rights passed under the first assignment, which was that to the plaintiffs. His executrix therefore had nothing to assign, and the defence failed.—*L.J.*, 1930, p. 226.

A Premier by Election.—During the last eight years the Legislature of the Irish Free State has made several changes in the Constitution to which it owes its existence—so many, indeed, that, as a letter which we published last week showed, they sometimes escape even the vigilant eyes of our contributors. A highly interesting provision, however, remains, namely, Article 53, which provides that the President of the Ministry shall be elected by the Lower House. He is "appointed on the

nomination" of that house; and when appointed, selects his Vice-President and colleagues. The Vice-President carries on the President's duties if that officer should die, resign, or be incapable, till a new President has been "elected." Three words are thus used in close collocation, but the result is plain: that the Premier owes his position to the choice of the members of the Lower House. The arrangement is unusual, and if precedents for it may be found abroad, we are not aware of any within the Empire. It removes all power of selection from the hands of the Sovereign, be he Emperor, King, or President of a Republic, and breaks away from the ancient tradition of England, which prescribes that the Sovereign shall ask a retiring Premier for whom he should send as a successor. Some critics may think that such a provision must lead to a certain amount of intrigue, to the introduction of personal considerations, to the demanding of promises from intending candidates, to the subterranean proceedings and labyrinthine negotiations which are generally described in the comprehensive term "lobbying." A Premier appointed by the Sovereign, entrusted with the Seals, or whatever be the appropriate emblem, chooses his colleagues and faces the House of Commons. In a very rare case, such as that of the younger Pitt, he may hold on though defeated in the Commons; but the precedent of 1784 is unlikely to be followed. The House does not choose; but it approves or disapproves the Sovereign's choice.—*L.J.*, 1930, p. 227.

A Potent Legacy.—The judicial office is hedged about with unwritten prohibitions. It is not seemly for a Judge to show any keen interest in politics; he may utter hard sayings of the Legislature as a workman may, without offence, say bitter things concerning the men, who were unskilful in manufacturing the tools of his trade. He may assail politics in general, but must not single out for his caustic comment any part in particular. Again, he may not be mixed up in the control of commercial enterprises. It is not done. For Judges, like Justice itself, must not only be impartial, but must plainly appear to be so. And if Mr. Justice A. were interested in Company B. it would be unthinkable that he should sit in judgment in the case of *Company B.* v. *Company C.*, or in any case where the interests of Company B. were affected by the result of the action.

As here, so in Australia; and the Chief Justice of the Commonwealth, finding himself the happy beneficiary of large commercial interests under the will of a friend, felt constrained to

make the choice between retaining his judicial office are accepting what was coming to him under the will. Report says that he has made his election and chosen the better part. He will accept the onerous duties involved in the last will and testament of his deceased friend, and sacrifice the high judicial post.—*L.J.*, 1930, p. 235.

The Best Advocates.—"Our judges," wrote Lord Birkenhead on one occasion, "are almost all able, and they are all incorruptible. The best of our advocates are eloquent, courageous, and high-principled." Let it be the constant aim of each and every one of us who are advocates to be included in the best. But there have been, in the past, not only judges who are "not apt," but advocates who have won and lost cases without eloquent advocacy and without the aid of high principle.

I remember one, an enormous if not a great man, who in a case without merit secured a highly advantageous settlement by appearing in the corridor on the morning when his case was down for hearing, with his clerk in close attendance laden with a heavy burden of Law Reports, selected at random from the shelves in his Chambers. The effect upon the youth who was briefed for the defendant was according to design. Here was a case in which he was certain he could win on elementary principles without recourse to law report or text-book; and behold, some twenty volumes covering three centuries of legal lore. Result, a settlement. Judgment for the plaintiff on the terms endorsed on counsel's briefs. And the inference is that in times gone by not all advocates found it always necessary to be eloquent and high principled.—*L.J.*, 1930, p. 235.

Stand Down!—The big man would at times refresh us with stories of his exploits as a cross-examiner; his tales always had an ending happy for the cross-examiner, the complete confusion of the witness and the hero's order to "Stand down, sir!" Not only the witness, but his counsel and the Judge himself appear to have been overwhelmed in the ruins.

But have you observed in the many tomes of legal anecdotes how often the cross-examining counsel is represented as ending the witness by the command to stand down. "'Stand down,' he roared." And that is the end of it. But surely, save in those rare cases where, when counsel is engaged for

each side, one is allowed to cross-examine his own witness, the cross-examiner cannot roar his learned friend out of the right to re-examine? From a dramatic point of view it is, perhaps, a pity; but there it is. There is one tale among many of the "stand down" variety in which counsel for the defendant in a criminal case obtains an admission from a witness for the prosecution that he knew when he employed the prisoner that the prisoner was a thief. " 'Do I understand that you employ dishonest people to work for you, even after their rascalities are known?' 'Aye, indeed, how else could I get the help of a lawyer?' 'Stand down,' shouted the man of law." So the story goes.—*L.J.*, 1930, p. 235.

Swift, J., on Speech.—During the hearing of a recent "running down'' case, Mr. Justice Swift had occasion to make some good-natured comment on the length to which a simple case might endure owing to what a brother judge once described as the unconscious art of the skilled advocate. The badly injured plaintiff was asked how far away the lorry was when he first saw it and the time which elapsed from the first view to the final crash. Four seconds was the plaintiff's estimate of the time. "Far longer," the Judge observed, "than it has taken to tell it."

Later, on the question of special damage, the plaintiff told how, in his business, if one did four hours' work in three hours, he received four hours' pay. At which revelation of the rationalization of industry, the Judge was understood to express a hope that some such basis of remuneration might be applied with advantage to the Bar.

But despite the complaints, to which A. P. Herbert has recently added his grouch by reason of the subpœna which (unnecessarily) recalled him from a holiday on the High Seas, things are infinitely better than they were. Cases which formerly would have kept the Courts going for days are being settled out of Court. Cases which would have endured for weeks are brought to an untimely end in a day or two when the weak point becomes known, and the Judge does not conceal the fact that he is aware of it. He does not now, as in the courteous olden time once happened, hear a two-days' speech, and at the end of the case observe that the Act on which the pleadings were founded had been repealed.—*L.J.*, 1930, p. 235.

Bateson, J., on Wills and Settlements.—On Wednesday, Bateson, J., gave an illustration of how this speeding up has

infected the Probate Division. He told the litigants in a contested will case, father and son, that he thought they were very foolish to throw their money away, and plainly asked counsel to come to a sensible arrangement. And they did; and thereby killed what in other days would have been regarded as the goose that laid the golden eggs.

Contrast this with the old story, not altogether apocryphal, of the young solicitor who, soon after joining his father's business, brought an old case to a sudden end, and boasted of his prowess to his parent. Sadly he was told that by his rash action he had killed a cause which had enabled the father to marry, to educate the impulsive son and provide portions for two daughters; a cause which, by the exercise of common prudence, might have provided not only for the son and his wife, but for the children and grandchildren of the marriage.—*L.J.*, 1930, p. 235.

Income Tax Appeals.—The discussion last week in the House of Lords on the practice with regard to appeals to that House in Income Tax cases, which was initiated by Lord Dunedin, was not very encouraging, although the Government promised, as they could not very well help doing, to consider the matter. Lord Dunedin's suggestion was that where the Crown lost in the Court of Appeal, they should not be entitled to go to the House of Lords except with the leave of the Court of Appeal, and that where leave was given, the Court should be empowered to impose such conditions as to costs as it thought fit. Lord Hailham, in a speech which, as Lord Dunedin later observed, seemed to indicate a "thorough distrust" of the Court of Appeal, appeared to suggest that the Judges of the Court of Appeal are in the habit of allowing their judgment to be swayed —"have allowed themselves to be a little misled," to use his exact words—by feelings of sympathy for the taxpayer; and he thought that the remedy for any hardship lay in "tightening the administrative machinery and insisting on a more rigid examination of cases by the Law Officers." We are fully in agreement with Lord Dunedin that public opinion demands a change of practice, and we are quite sure that it will not be content with anything so intangible as is suggested by Lord Hailsham. It may be that it is undesirable to give the Court of Appeal power to refuse altogether leave to appeal to the House of Lords in Income Tax cases; but there can be no reasonable objection to that Court being empowered to impose

terms as to costs in cases in which the Crown desires to appeal from a judgment in favour of the taxpayer.—*L.J.*, 1930, p. 241.

Breach of Promise Actions.—Sir Edward Parry has been discussing in the *Morning Post* (March 31) whether "breach of promise" should be retained. The action has always been a bit of a puzzle. Contracts for marriage were once the affair of the Ecclesiastical Courts, and when their jurisdiction ceased, and the Common Law Courts took it over, the question arose, should the man be able to sue as well as the woman. Against the man's right it was argued that marriage was no advancement to him, but it was to the woman, and the promise made to him lacked consideration. But the law was settled in favour of the equality of the sexes, and so the man had his action: *Harrison* v. *Cage and Wife* (1699, Carth. 467). Then there was the question of damages, and as is well known, it was held that these were not merely the ordinary damages in breach of contract, but might be exemplary damages, and regard might be had to injured feelings, affections and wounded pride, as well as to loss of the marriage: *Smith* v. *Woodfine* (1857, 1 C.B.N.S. 600: *Finlay* v. *Chirney*, 1888, 20 Q.B.D. 494). The judgment of Bowen and Fry, L.JJ., in the latter case, delivered by Bowen, L.J., contains a detailed history of the action. Sir Edward writes to interest readers rather than to give a definite opinion, but he makes a suggestion which would remove all doubt as to the fact of the engagement. Let each party be bound to wear a Government ring with a registered number. The rings would be sold by the Treasury at varying prices, and would assist the Budgets of the future. We should then have registration of marriage contracts as well as of estate contracts, and this would leave only the question of damages. For that a sympathetic jury will always be required.—*L.J.*, 1930, p. 243.

Leader and Junior.—Du Parcq, owing to the exigencies of legal practice, was obliged on Monday, while his "Bolivia Concessions" Case was still current in Court IV, to appear for Podmore in the Court of Criminal Appeal; and two good things resulted from the well-known impossibility, oft-lamented by clients, of appearing in two places at one and the same time. Gallop, his junior in the case of *Sohr* v. *Bolivia Concessions, Ltd.*, had the opportune responsibility, unusual for a junior, of cross-examining the principal witnesses for the defence; and

was able to discharge that duty in the absence of his leader without loss or injury to the victorious client. Thus juniors of standing sometimes get their chance.

Meanwhile, du Parcq, although he failed to secure from Avory, J., and his two brothers an adverse opinion of the summing up of the Lord Chief Justice in the Podmore trial, achieved a rare distinction. For Avory, J., in delivering the judgment of the Court, observed that while the contentions put forward on the prisoner's behalf were not different in kind from those which was usually and vainly put forward in such appeals in that place, they were advanced with unusual persuasiveness. A high compliment from the lips of Mr. Justice Avory. Moral: Leave the other case to your junior.—*L.J.*, 1930, p. 253.

One for a Hit to Twelve for a Miss.—The new Mexican penal code is said to present some starting anomalies as to maxima sentences. One, which is specially attracting notice, is the provision that anyone attempting to shoot another and failing, is liable to three years' imprisonment, while any person who shoots and hits, inflicting only minor injuries, is liable to only three months. But is this as mad as it seems? In a country where the use of firearms is common, the wild marksman is a public danger; he may hit anybody. He is worse than a murderously minded pistoller—he is a street nuisance. The marksman who hits has a definite and limited object. He may be wicked, but he is at least likely not to maim those who have not offended him. Perhaps, too, good marksmanship is honourable in Mexico. They want men who can shoot straight in a land where a revolution is the recognised method of changing the government. Therefore shut up the bad shot and gently censure the good! But the criticism of the Mexican penal code is reported from New York, and we seem to remember reading recently in an American publication the very same criticism of the penal codes of some of the United States, that they too punish a hit with a bullet more lightly than a miss. Perhaps the whole thing is only one more exhibition of modern methods in journalism.—*S.J.*, 1930, p. 192.

Enticing a Wife by Contract.—A case is said to be pending in Paris in which a rich American is suing the management of a French theatre on the ground that they engaged his wife

to act there without his permission. One defence alleged is ignorance of the lady's status, but whether that defence were open or not, no such action could be maintained in the English courts in the twentieth century. The issue whether an action of enticement would lie in such circumstances, however, appears more open. A wife's duty is to live with her husband, whose right it is—one of the very few left to him—to choose the place of the matrimonial home. Let it then be supposed that he has to live in Northumberland, where his work is, and that someone offers her a handsome salary to act in London, or even pose as a film star in Cornwall. Obviously such a contract would conflict with her wifely duties, and would form a very strong enticement to her to neglect or abandon them. Possibly the defence of ignorance of the fact that the lady was a married woman might succeed, but it would be a difficult one to maintain, requiring proof that she had deceived both her husband and her employers in the matter. If the latter contracted with her knowing that she was a married woman, they might plead that they were entitled to assume that she was free to enter into the arrangement with them either on the assumption that her husband did not object, or that he would change his home so that she could fulfil her contract while living with him. Breach of the contract then might give rise to an action against her, but would the husband be liable for inducing her to break it? The point does not appear to have arisen, but it is submitted that he would not be, for his claim on her company would be paramount. A third case might be supposed, in which the husband warned the employers before the contract that he objected. It is arguable that, on the analogy of bequests on condition that a wife lives apart from her husband (see, for example, *Wilkinson* v. *Wilkinson*, (1871) L.R. 12 Eq. 604), such a contract, in derogation of marriage duties, would be void, and that therefore there would be no defence to an action for enticement. In the converse case, it is hardly conceivable that an action by a wife would lie, for the matrimonial home, and therefore her duty within it, follows the husband. Sometimes well-known actresses have married on the bargain with their husbands that their careers were to continue, but, whatever effect such an ante-nuptial pact might have, it could hardly deprive a husband of his ordinary marital rights.—*S.J.*, 1930, p. 192.

Precedence of President of Probate Division.—A small slip in the interesting article on the House of Lords as an appellate tribunal, which appears in the new volume of the "Encyclopædea of the Laws of Scotland," as to the position of the President of the Probate, Divorce and Admiralty Division, may make it of interest to recall the stages by which this high judicial office has gradually been increased in dignity. In the article above referred to it is stated that "by the Supreme Court of Judicature Act, 1881, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice for the time being is also declared to be a Lord of Appeal." This is an error. By S. 4 of that Act the President for the time being was made an *ex-officio* judge of the Court of Appeal, which is not the same thing as being made a Lord of Appeal. The section did, however, increase his dignity, but it also provided that he was not to be entitled in the Court of Appeal to precedence "over any existing judge to which he would not have been entitled as a Judge of the Supreme Court of Judicature if this Act had not passed." So the position continued for many years, the President, when sitting in the Court of Appeal, taking precedence among the Lords Justices according to the date of his appointment. But by the Administration of Justice Act, 1920, it is provided that he shall have rank and precedence next after the Master of the Rolls, and that provision is reproduced in S. 16, Sub-S. (2), of the Supreme Court of Judicature Act, 1925. The President at the present time, Lord Merrivale, is, however, entitled to sit in the House of Lords in its judicial capacity, not by the mere fact that he is the President of the Division of which he is the head, but by reason of the fact that he is a peer of Parliament who is holding "high judicial office." The present Lord Chief Justice and the Master of the Rolls, also being peers, are in the same way qualified to take part in the judicial work of the House of Lords.—*S.J.*, 1930, p. 207.

Siamese Twins.—"Siamese Twins," says Murray's English Dictionary, were "two male natives of Siam, Chang and Eng (1814-1874), who were united by a tubular band in the region of the waist." There must have been before, and there have been since their appearance, a number of cases in which erring nature has produced similar phenomena, and the adjective "Siamese" is invariably applied. It is not difficult to appreciate the innumerable difficulties under which such twins must of

necessity labour, and it is equally easy to realise that their unfortunate condition cannot entail any advantages, unless it be, perhaps, that such as are so minded can earn a livelihood with a minimum of effort by submitting themselves for exhibition purposes. Even in that direction, however, there may be much healthy competition, and with reference to the original Siamese twins *The Times* of the 26th November, 1829, refers to a statement in the Paris papers to the effect that the Sardinian girl with two heads had died on the preceding day and the Siamese twins would therefore have a clear field in that capital. In America, however, according to Siamese twins there, there does exist an additional advantage. The twins claim to have been permitted to travel on the United States railways with *one* ticket. An application by the same twins to travel to Europe on one ticket, however, has been met with a refusal by the steamship company on the ground that travel at sea includes meals, whereas railway travel does not. An obvious and understandable objection. Two individual and independent personalities united corporeally in such manner that the will of one cannot be effected without the consent of the other presents the possibility of difficult legal problems, the importance of the solution of which is only minimised by the rarity of the cases. The terms of a contract desired to be entered into by one twin, for instance, may be as inseverable as the twins themselves, but that legal redress for a breach would not equally affect both. The cases, however, as observed, are rare, and where they do exist mother nature appears by way of compensation to have modelled their mentalities so that they are generally *ad idem* in matters that materially affect them both.—*S.J.*, 1930, p. 209.

BOOK REVIEWS.

TRIAL OF OSCAR SLATER. Edited by W. Roughead. Notable British Trials Series. 3rd Edition, 1929. Published by Messrs. Butterworth & Co. Price Rs. 6-8-0.

The story of the trial of Oscar Slater given in the Introduction to this volume excites so much our curiosity that we feel the urge within us to finish the book at a stretch. Nowhere in the history of trials could have been a graver mistake as to the identity of persons than in this case. Lack of materials and omission to include proper evidence which could have disproved the charge against an innocent man, happened to combine in

the hands of the Lord Advocate of Scotland who carried on a successful prosecution against the wrong individual and got him a conviction to a long imprisonment. But for the indefatigable energies of public-spirited men like Sir Arthur Conan Doyle, the truth about the murderer could not have been so ably ravelled after nearly two decades, though one would still like to know who the real culprit is. It is impossible to expect of the saviours of Oscar Slater the clue to finding out the murderer of Miss Gilchrist, after the lapse of so many years that had almost obliterated all the available traces of evidence in the case. The evidence for the prosecution printed in the following pages only suggests to the careful reader, how much of lacunæ has been covered by the undaunted eloquence of the counsel. The sitting of the Court of Appeal in judgment over a trial that was concluded twenty years back, is a fine instance to prove that in the highest Courts of the land, justice shall be done at all costs and even if the Heavens fall down.

We feel thankful to the editor of this volume for having brought out the publication so soon after the deliberations of the Appeal Court were over in 1928.

LETTERS TO A YOUNG BARRISTER, by F. J. Wrottesley. Published by Sweet & Maxwell, Limited, London.

These letters of advice to the novice in the legal profession bear the stamp of much experience and self-discipline on the part of the writer himself. Everyone who happens to go through these instructive pages cannot fail to appreciate the exhaustive hints on advocacy. The methods of examination and cross-examination of witnesses form the major portion of this volume and are at once interesting and inspiring. We feel an inordinate pleasure in reading this book as the author has not spared any pains to make it attractive.

THE INDIAN PENAL CODE, by Dr. Nand Lal, B.A., LL.B. (Cantab), LL.D. In two volumes. Price Rs. 30 per set.

This is a most exhaustive commentary on the Indian Penal Code in two volumes by Dr. Nand Lal who is well known as the author of the standard treatise on the Civil Procedure Code. That no point or decision of any importance has been omitted in the treatment of the subject will be evident from the fact that the volumes have run to nearly three thousand pages and the author has also utilised the learning and research in all the treatises that appeared before it. The treatment of the subject is the one adopted by the learned author in his commentaries on

the Civil Procedure Code. In a work of this character, it is needless to say that all the amendments to date have been noticed in their places and the case-law whether in the authorised or private legal journals has been brought thoroughly up to date. To any one who may complain of the bulk of the work, we would, agreeing with the author, say that it is impossible for a treatise "to be complete as well as thorough and at the same time brief and handy." The first volume deals with sections 1 to 298 of the Indian Penal Code and the second volume with the later sections. It is a noteworthy feature of this work that there is a general index at the end of each volume, an innovation which the author thinks from his experience will be found more useful. We have no doubt, that on account of its exhaustiveness and thoroughness, the work will take its place among the foremost treatises on the subject.

THE TRANSFER OF PROPERTY ACT, by E. Vinayaka Row, B.A., B.L. and S. Appu Row, B.A., B.L., Advocates, High Court, Madras. Published by the Law Publishing Company, Mylapore. Price Rs. 9.

It is with great pleasure that we acknowledge the receipt of the commentaries on the Transfer of Property Act by Messrs. E. Vinayaka Row and S. Appu Row, members of the Madras Bar. The recent amending Acts to the Transfer of Property Act have called forth a number of commentaries of the original Act as amended and the learned authors have done well in bringing out this handy volume, setting out the original and new sections in parallel columns and clearly explaining the changes in the commentaries. The learned authors have not indulged in unnecessary citation of cases and have mainly aimed at lucidity in the statement of the principles of law. To the student, learned commentaries overburdened with case-law will, far from being helpful, be embarrassing and the present work with its clear statement of the law will be particularly valuable. While the authors have given reference to the decisions under the original sections they have no option but to quote largely from the report of the Select Committee in the notes to the amended sections, although it may have no value in the interpretation of the sections. We hope that the work will be received with the popularity which it richly deserves.

THE INDIAN CONTRACT AND THE SALE OF GOODS ACTS, by T. R. Venkatesa Aiyar, B.A., B.L., Advocate, High Court,

Madras. Printed at the Kesari Printing Works, Madras. Price Rs. 8-8.

This is a handy commentary on the Indian Contract Act and the Sale of Goods Act which was recently passed by the Indian legislature and which has taken the place of the chapter on the sale of goods as it originally stood in the Indian Contract Act. As the sections of the Indian Sale of Goods Act have been largely reproduced from its English prototype, the learned author has largely given references to the decisions under the English Act. To those in the mofussil to whom the English reports are not easily available the commentaries which set out the points of decision of the English cases will be found particularly useful. We have great pleasure in recommending this publication for a clear understanding of the provisions of the Indian Contract Act and the Indian Sale of Goods Act.

A HANDBOOK OF INDIAN TRADE UNION LAW, by T. A. Anantha Aiyar, B.A., B.L., Advocate, High Court, Madras. Price Rs. 4.

This attempt to explain briefly and comment carefully with comparisons of the important sections of the Indian Trade Union Act with the English Law on the subject, cannot fail to deserve our appreciation. Coming as the book does at a time when the Trade Union Law is in its stage of inception in this country, we are sure the publication will serve, as the author himself hopes, as a handbook. The inclusion of the regulations of the Local Governments of the various provinces in India and the forms and rules regarding Trade Unions, in the appendices, is a healthy indication that the book will receive wide recognition.

THE CODE OF CIVIL PROCEDURE (ACT V OF 1908), by K. N. Katju and S. C. Das. Printed at the Allahabad Law Journal Press. Series No. 1, 2nd Edition, 1930. Price Rs. 6.

We extend our thanks to the authors of this book for having brought out in quick succession a second edition of their useful work. The addition of some of the latest Acts as the Bar Councils Act and the U.P. Village Panchayat Act in the Addendum S to this edition as well as the scrupulous attention bestowed in including the modifications to some of the sections and orders of the Civil Procedure Code with the rules framed by the various High Courts and the case-law up-to-date under the relevant sections, cannot but add to its usefulness. Even

the recent changes introduced by the High Court of Allahabad in Order 7 and in Rule 2 of Order 8 have found a place here.

We are hopeful that the utility of this volume will be easily recognised.

THE CODE OF CRIMINAL PROCEDURE, by E. H. Monnier. Published by the Calcutta Weekly Notes Office, Calcutta. Price Rs. 25.

We have great pleasure in welcoming this monumental work of E. H. Monnier. It is a pity that Mr. Monnier did not live to see the publication of his work, as he passed away when about two-thirds of the work had been printed. The more recent decisions have been incorporated by Mr. Phanibhusan Chakravarti, Advocate and member of the Editorial Staff of the Calcutta Weekly Notes, who prepared the addenda.

Mr. Monnier was a leader of the Criminal Bar of the Calcutta High Court and was well known for his erudition in this branch of the law. In the book under review, the history of all the important sections have been given and the recent legislative amendments have been carefully noted and given prominence. In arranging the case-law under each section indicating with clearness and precision, the conflicts and divergencies of judicial opinion, the learned author has spared no pains. We have no hesitation in recommending this work to the members of the legal profession.